ANDRES ORTIZ LAW
ANDRES ORTIZ (CSBN 279239)
4201 LONG BEACH BLVD., STE 326
LONG BEACH, CA 90807
PH. 657-243-3768
ANDRES.ORTIZ@ANDRESORTIZLAW.COM

Attorneys for Salim Esmail

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Salim Esmail, Petitioner, v. Kristi Noem, Secretary of the Department of Homeland Security; et. al, Respondents.	Case No.: 2:25-cv-08325-WLH-RAO **OPPOSITION TO THE RESPONDENTS' MOTION TO DISMISS; DCKT. 15**

RESPONSE TO THE RESPONDENTS' MOTION TO DISMISS

Prior to the September 26, 2025 preliminary injunction hearing, the Court issued a tentative ruling indicating that the Petitioner was entitled to a preliminary injunction on his petition for writ of habeas corpus. Specifically, the Court found that the *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) factors sharply favor the Petitioner in his claim that his revocation of an order of supervision (OSUP) was unlawful and that Immigrations and Customs Enforcement (ICE) was likely to violate his due process rights if it removed him to a third country without notice or an opportunity to express fear of removal through the reasonable fear process. *See* Dckt. 14. The parties were scheduled

for argument on September 26, 2025; however, after receiving the tentative ruling, the Respondents chose to not argue its case in court, to change the Court's mind and, instead, submitted on its brief. Specifically, in granting the preliminary injunction, the Court observed that the contention that the matter is moot because the Petitioner was released from custody "strains credulity." *See* Dckt. 14 pg. 6-7 n. 5. Furthermore, the Respondents do not admit that the Noem and Lyons' memos are unlawful.

Now, the Respondents file this motion to dismiss. Perhaps knowing that its arguments on the merits were unavailing, the Respondents now argue that the petition is now somehow simultaneously moot and unripe. In its mootness argument, the Respondents essentially repeat its "terse" argument that releasing the noncitizen under the court's order *to maintain the status quo* during litigation somehow moots this matter. Next, the Respondents argue that this removal without due process issue is not ripe. *See* Dckt. 15 at pg. 5. Confoundingly, the Respondents recognize there is standing but nevertheless argue the claim is not ripe. *Id.* The Respondents' position ignores clear Supreme Court precedent that when assessing the government's pre-enforcement action; "the Article III standing and ripeness issues … boil down to the same question." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007). *See also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 n.5 (2014) ("Any dispute about ripeness … is better understood as an issue of standing — whether the plaintiffs have alleged a sufficiently imminent injury.")

This response is made upon this Notice, the attached Memorandum of Points and Authorities, the pleadings and papers on file herein. Because, the Respondent's motion to dismiss is meritless and this Court must deny the motion.

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Date: 10/8/25

Respectfully submitted,

/s/ Andres Ortiz
Andres Ortiz, Esq.
Andres Ortiz Law
Attorney for the Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Petitioner files this opposition to the motion to dismiss. As the Court has held throughout these proceedings, the Respondents' opposition is meritless. This motion to dismiss is no different. In granting the motion for preliminary injunction, the Court held that the Petitioner was likely to win on the merits of his detention and third-country removal claims. *See* Dckt. 14. After receiving the Court's tentative ruling, the Respondents chose not to argue their position in court. Instead, they filed this motion to dismiss. Tellingly, the motion to dismiss does not suggest that the Petitioner should not win on the merits of his case. Instead, the Respondents have shifted their arguments to aver that this matter is somehow moot and unripe. *See* Dckt. 15 at pg. 4-5.

Both theories are unavailing and misinterpret settled precedent relating to Article III standing. Specifically, the Respondents suggest that the case is moot because the noncitizen has been granted *interim* relief to maintain the status quo during litigation. This Court has previously held that this position "strains credulity." *See* Dckt. 14 pg. 6-7 n. 5. Then, the Respondents argue that the third-country removal claim is not ripe. Again, this claim necessarily fails because the Supreme Court has recognized, in pre-enforcement challenges to government action, "the Article III standing and ripeness issues … boil down to the same question." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007). See also *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 n.5 (2014) ("Any dispute about ripeness … is better understood as an issue of standing — whether the plaintiffs have alleged a sufficiently imminent injury."). Consequently, this Court should deny the motion to dismiss and instead, grant the petition on its merits because (1) there is jurisdiction and (2) the Respondent does not raise any substantive challenges to the merits of the preliminary injunction grant.

II. JURISDICTION AND VENUE

After essentially conceding the merits of the habeas petition, the Respondents seek dismissal by arguing that the matter is moot and somehow simultaneously unripe. *See* Dckt. 15 at pg. 3-5. First, the Respondents aver that the detention claim is moot because the Petitioner has been released from detention and he has not been redetained. *Id.* at 3-4. As explained below, this argument ignores the temporary nature of a preliminary injunction. There is no reason to dismiss this case because there is no final adjudication on the merits of the claim. Second, the Respondents contend that the matter is unripe because the Petitioner has not been redetained. Each argument is without merit and will be addressed in turn.

A. GRANTING A PRELIMINARY INJUNCTION ON THE UNLAWFUL DETENTION CLAIM DOES NOT MOOT THE MATTER

The government is wrong for two reasons in its contention that the case is moot. First, the Supreme Court recently clarified the significance of a preliminary injunction in a case seeking a declarative judgement and a permanent injunction. And second, the government attempts to suggest, without providing analysis, that there was voluntary cessation. However, the Respondents do not meet the "heavy burden" of establishing the same harm will not repeat itself if this matter is dismissed. Each will be addressed in turn.

Recently, the Supreme Court issued guidance on the legal status of a preliminary injunction. *See Lackey v. Stinnie*, 604 U.S. 192 (2025). Specifically, the Supreme Court observed:

> *Preliminary injunctions, however, do not conclusively resolve legal disputes* . . . The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held, *University of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) . . . As a result, we have previously

> cautioned against improperly equat[ing] likelihood of success with success and treating preliminary injunctions as tantamount to decisions on the underlying merits. *Id.*, at 394.

Id. at 200-201 (quotation marks omitted and emphasis added). Thus, "[b]ecause preliminary injunctions do not conclusively resolve the rights of parties on the merits, they do not confer prevailing party status." *Id.* at 201. In other words, the Supreme Court concluded that a preliminary injunction is **not** a final adjudication on the merits. This Court recognized as much in footnote 11, "[h]ere, where no party has yet prevailed in this civil action, the Court finds the request [for EAJA fees] premature." *See* Dckt. 14 at pg. 18 n.11. Thus, there is no final judgment on the merits of the habeas petition.

It follows that because the Petitioner was released on an interim basis during the litigation is not a final determination on the merits of this controversy. Perhaps, if the Respondents affirmatively admitted that the permanent injunction should be granted, it would end the controversy. However, the Respondents continue to continue to oppose the petition and thus, the controversy must be resolved by the Court.

Given the fact that the preliminary injunction is not a final decision on the merits of the case, it appears that the Respondents are attempting to argue, without providing analysis, that there was voluntarily cassation in this matter. This argument also fails. Courts have long recognized that "voluntary cessation" is a mootness exception. *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1173 (9th Cir. 2009) (citation omitted). "Under this doctrine, the mere cessation of illegal activity in response to pending litigation does not moot a case, unless the party alleging mootness can show that the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* This doctrine is needed, because if not, the defendant is "free to return to his old ways." *Porter v. Bowen,* 496 F.3d 1009, 1017 (9th Cir.2007) (alterations in original). If the defendant alleges voluntary cessation, it must meet the "heavy burden" of proving that "it is 'absolutely clear' that the allegedly

wrongful behavior will not recur if the lawsuit is dismissed. *Rosemere*, 581 F.3d at 1173.

When assessing whether the government has met its "heavy burden", the court will consider factors such as:

> (1) the policy change is evidenced by language that is "broad in scope and unequivocal in tone,"; (2) the policy change fully "addresses all of the objectionable measures that [the Government] officials took against the plaintiffs in th[e] case"; (3) "th[e] case [in question] was the catalyst for the agency's adoption of the new policy,"; (4) the policy has been in place for a long time when we consider mootness; and (5) "since [the policy's] implementation the agency's officials have not engaged in conduct similar to that challenged by the plaintiff[ ]"

Rosebrock v. Mathis, 745 F.3d 963, 972 (9th Cir. 2014). However, ultimately, the Court must decide "whether the party asserting mootness has met its *heavy burden of proving that the challenged conduct cannot reasonably be expected to recur*." *Id.* (citation omitted and emphasis added).

A little more than a decade ago, the Central District of California applied *Rosemere* to immigration related litigation. *See Franco-Gonzalez v.* Holder, No. CV 10-02211 DMG DTBX, 2013 WL 3674492, at *4 (C.D. Cal. Apr. 23, 2013). This Court found that ICE's immediate compliance with the its orders did not moot the case. *Id.* ("Defendants' swift actions to ensure that identified Sub–Class One members have been released, appointed counsel, or had proceedings terminated during the course of these proceedings or pursuant to this Court's preliminary injunction rulings do not vitiate Plaintiffs' claims that, absent court intervention."). *Id.*

Turning to the matter at bar, the Court, consistent with recent Supreme Court precedent, has previously observed that the grant of a temporary restraining order and the preliminary injunction are remedies to preserve the status quo during the pendency of litigation. They are not a final adjudication on the merits of the petition. Thus, the mere fact that the Court *temporarily* ordered ICE to maintain the status quo during the litigation is not a final adjudication on the merits of the petition. Consequently, there

is little serious doubt that the matter is now moot simply because the interim relief was granted.

In addressing the voluntary cessation claim, it too must fail. It appears the government made subtle overtures to a voluntary cessation argument, without using the term- and for good reason. The thrust of the motion to dismiss fails to acknowledge that the Petitioner's constitutional rights were violated nor have the Respondents identified a significant policy change that assured the Court that he would not be redetained without proper process. *See* Dckt. 15 at pg. 4. Instead, the Respondents merely note that the Petitioner has not had his new OSUP revoked and that he has not brought a "new detention" claim. *Id.* (emphasis retained). No serious jurist would conclude that the Respondents' compliance with the Court's order, on a temporary basis, without any acknowledgment that they engaged in wrongdoing, and without changing the unlawful policy is voluntary cessation. Thus, it is not "'absolutely clear' that the [unlawful redetention] will not recur if the lawsuit is dismissed" and the claim should be adjudicated on the merits.

For these reasons, the matter is clearly not moot.

B. THE THIRD-COUNTRY REMOVAL CLAIM IS RIPE

The Respondents also argue the matter is also unripe and thus, the matter must be dismissed. *See* Dckt. 15 at pg. 4 ("Nor do courts have subject matter jurisdiction over unripe claims. *See S. Pac. Transp. Co. v. City of L.A.*, 922 F.2d 498, 502 (9th Cir. 1990) ("If a claim is unripe, federal courts lack subject matter jurisdiction."). However, Supreme Court precedent forecloses this argument. The "basic rationale of the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements … and to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967).

Over the past two decades, the Supreme Court has held that in pre-enforcement challenges to government action, "the Article III standing and ripeness issues … boil down to the same question." *MedImmune, Inc.*, 549 U.S. at 128 n.8; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. at 158 n.5 ("Any dispute about ripeness … is better understood as an issue of standing — whether the plaintiffs have alleged a sufficiently imminent injury.").

Recently, the Court held that the Petitioner has standing in the third-country claim. *See* Dckt. 14 at pg. 8-14. Ultimately, the Court agreed that the Petitioner had standing by "'demonstrat[ing] that the harm is part of a pattern of officially sanctioned . . . behavior, violative of [] federal rights.'" [*Melendres v. Arpaio*, 695 F.3d 990, 997 (9th Cir. 2012)] (*quoting Armstrong* [*v. Davis*], 275 F.3d [849,] 861 [(9th Cir. 2011)] (internal quotation marks omitted)." *Id.* at pg. 9. The Court observed, "Respondents' "written policy" – which is inherently "'part of a pattern of officially sanctioned . . . behavior'"– appears to afford insufficient due process to noncitizens with orders of removal, thereby inherently "'violat[ing] . . . federal rights.' *Melendres*, 695 F.3d at 997 (quoting Armstrong, 275 F.3d at 861)." *Id.* at 10. Finally, the Court observed that its order would redress the injury. *Id.* at 10-11.

Because Article III standing and ripeness "boil down to the same question," any remaining ripeness objection fails as a matter of law. *MedImmune, Inc.*, 549 U.S. at 128 n.8. Here, the challenged DHS memorandum is a final, operative policy that authorizes the removal of individuals with final orders "at any time" without notice. Petitioner is subject to that policy at this very moment because he was previously ordered removed. The threat of enforcement is not speculative but continuous, rendering the dispute both constitutionally and prudentially ripe. *Susan B. Anthony List*, 573 U.S. at 158 n.5 (2014) (treating ripeness as part of standing where policy imposes a credible threat of enforcement). As such, the case is ripe for the Court's review.

III. FACTUAL BACKGROUND

The Respondents filed this motion to dismiss after choosing not to argue this matter after receiving the Court's tentative decision on the motion for preliminary injunction. Here, the facts are not largely in dispute.

The Petitioner, Salim Esmail is a native and citizen of Tanzania. *See* Dckt. 8 at pg. 4. He has suffered significant mental health issues, has been diagnosed with HIV, and bipolar disorder. *Id.* at pg. 5. Mr. Esmail served 17 years in prison for an attempted murder conviction and during that time was diagnosed with bipolar disorder. *Id.* After being released from criminal custody, the Petitioner was referred to immigration court for removal proceedings where he was ordered removed, but granted relief under the U.N. Convention Against Torture in 2008. *Id.* In 2011, the Petitioner was released on an OSUP. *Id.* Since Mr. Esmail's release, he has been hospitalized several times, but due to his current treatment plan, he has not been hospitalized in years. *Id.* Mr. Esmail had never been redetained for violating his OSUP. *Id.*

The Petitioner was redetained at a routine ICE check-in on September 2, 2025. *Id.* at 6. An unidentified SDDO signed his Notice of Revocation of Release indicating that the Petitioner's supervision was being revoked because the "case has been reviewed and [it was] determined that [he] will be kept in custody of U.S. Immigration and Customs Enforcement (ICE) at this time." *Id.* Mr. Esmail was not given an interview to determine if he should remain in detention. *Id.* The Petitioner's immigration counsel asked for Mr. Esmail to remain in California due to his medical conditions; however, he was transferred to Eloy, Arizona, despite the assurances that the Petitioner would remain in California. *Id.* at 8.

The Petitioner filed a petition for writ of habeas corpus alleging that he was unlawfully detained and that he feared being removed to a third country without notice or an opportunity to challenge the removal. *See* Dckt. 1. On September 12, 2025, a TRO was partially granted and the Petitioner was released from ICE custody.

See Dckt. 8. On September 26, 2025, the Court granted a preliminary injunction on both grounds. *See* Dckt. 15.

IV. ANALYSIS

In the motion to dismiss, the Respondents chose to not make any new substantive arguments on the merits of the habeas petition as to why it should not be granted. Instead, the Respondents averred that this court lacks jurisdiction to adjudicate the petition because it is simultaneously moot and unripe. As discussed in Section II., jurisdiction clearly exists to adjudicate this petition. "Respondents did not offer additional arguments opposing a [grant of the habeas petition] beyond those advanced in opposition to the [preliminary injunction]." *Nadar Nadari* v. *Pamela Bondi, et al.*, No. 2:25-cv-07893-JLS-BFM *1 (C.D. Cal. Sept. 3, 2025) (Docket No. 12). Thus, there is "no reason [for the Court] to depart from its previous analysis and [should] incorporate[] that analysis herein" and deny the motion to dismiss as well as grant the habeas petition. *Id.* at 2.

V. CONCLUSION

For the foregoing reasons, this Court should deny the motion to dismiss.

DATED: October 8, 2025
Long Beach, California

Respectfully submitted,

/s/ Andres Ortiz
Andres Ortiz, Esq.
Andres Ortiz Law
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *OPPOSITION TO THE RESPONDENTS' MOTION TO DISMISS* in *Salim Esmail v. Noem et. al*, with the Clerk of the Court for the Central District of California by using the appellate CM/ECF October 8, 2025, for filing and transmittal of Notice of Electronic Filing

/s/ Andres Ortiz
Andres Ortiz, Esq.
Attorney for Petitioner